

SERVED: October 20, 1998

NTSB Order No. EA-4710

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 6th day of October, 1998

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-15018
v.	)	
	)	
PABLO SPERONI,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent appeals the written initial decision of Administrative Law Judge William A. Pope, II, issued February 13, 1998.<sup>1</sup> By that decision the law judge affirmed in its entirety

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<sup>1</sup> A copy of the law judge's written decision is attached. Consolidated with respondent's hearing were allegations of similar FAR violations by Aero Bieke, Inc., respondent's corporate alter ego. Aero Bieke, Inc., however, did not appeal the revocation of its air carrier certificate.

the Administrator's emergency revocation<sup>2</sup> of respondent's Airline Transport Pilot ("ATP") certificate for, as alleged, violating sections 61.59(a)(2), 91.7, 91.13, 91.126(b), 91.203(a)(1), 119.5(g), 119.5(i), 135.293 and 135.299 of the Federal Aviation Regulations ("FARs"), 14 CFR Parts 61, 91, 119, and 135.<sup>3</sup>

The law judge's decision repeats the hearing evidence in detail. In brief, respondent's violations stem from his operation of a twin-engine Britten-Norman Islander into and out of airports within the United States ("U.S.") Virgin Islands and the islands of Puerto Rico. Respondent, on different but numerous flights, operated his aircraft without a U.S.-issued airworthiness certificate, operated it while it was in an unairworthy condition and in contravention of the terms of a Federal Aviation Administration ("FAA")-issued ferry permit, and flew it for commercial flights when he had not met various Part 135 requirements. Respondent also falsified records submitted to the FAA. And, ultimately, on August 7, 1997, respondent, after having flown his approach contrary to the published left-handed traffic pattern, collided with another Islander aircraft while on short final for the runway at Fajardo, Puerto Rico.

On appeal, respondent only argues that there was insufficient evidence that he falsified records or that he caused

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<sup>2</sup> Respondent waived the expedited procedures applicable to emergency cases.

<sup>3</sup> The relevant portions of the regulations are set forth in an Appendix to this opinion.

the mid-air collision. Turning to respondent's first argument, he challenges the law judge's finding that he violated section 61.59(a)(2) by falsifying records. Respondent's Brief at 1. The records at issue, supplied to the FAA by respondent to show compliance with Part 135 time limitations, indicate, with the exception of one flight flown on August 1, that all flights in August of 1997 were operated under Part 91.<sup>4</sup> The credited evidence, however, indicates those records were false. Respondent, who in August was still obligated by contract to deliver newspapers to several islands, was logged by airport officials as having operated commercial cargo flights during that time to deliver newspapers.<sup>5</sup> Comparison of the airport's records with the records respondent supplied to the FAA compels the conclusion that at least five of the flights indicated in the records as having been operated under Part 91 were, in actuality, the same cargo flights observed and logged by the airport officials as commercial flights. The evidence demonstrates, therefore, that the records falsely indicated that certain Part 135 flights were operated pursuant to Part 91.

The elements of intentional falsification are: 1) a false representation; 2) in reference to a material fact; and 3) made with knowledge of its falsity. See, e.g., Administrator v. Van

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<sup>4</sup> The flights at issue occurred up until August 7, 1997, when respondent's aircraft was destroyed as a result of the collision at Fajardo.

<sup>5</sup> Respondent also never protested the higher landing fees charged by the airport for commercial flights.

Eaton, NTSB Order No. EA-4435 at 4-5 (1996). The representation that the flights were operated under Part 91 was clearly false, and, as the law judge concluded, respondent knew the records were false because he, himself, had made them within a short time of having piloted the Part 135 flights. Moreover, the false representation was material because it had the potential to mislead FAA inspectors and others as to the true nature of the flights and the regulatory requirements applicable to them. Cf. Administrator v. Thunderbird Propellers, Inc., NTSB Order No. EA-4648 at 6-7 (1998) (emphasizing the fact that others may rely on records for an unanticipated but valid purpose); see also Administrator v. Cassis, 4 NTSB 555 (1982), aff'd 737 F.2d 545 (6<sup>th</sup> Cir. 1984).<sup>6</sup>

Next, relying on tort principles of causation, respondent argues that "even if respondent was negligent in making his approach for landing [at Fajardo], such negligence was not the cause of the collision because that act was over by the time the aircraft collided." Respondent's Brief at 5. Respondent thus appears to argue that the collision itself cannot support a finding of carelessness or recklessness. This argument is

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<sup>6</sup> The law judge, after finding that respondent intentionally falsified the records, also found that the Administrator proved the additional elements required to show fraud. Respondent's appeal does not appear to contest that finding, and, in any event, intentional falsification is, in and of itself, sufficient grounds for revocation. See, e.g., Administrator v. Croll, NTSB Order No. EA-4460 (1996) (one instance of intentional falsification warrants revocation). Consequently, we have no reason to discuss respondent's contention that he lacked the motive to falsify.

misplaced. Aside from whether or not we believe respondent was the sole or contributing cause of the accident, potential endangerment is sufficient to find a violation of section 91.13. See, e.g., Haines v. DOT, 449 F.2d 1073, 1076 (D.C. Cir. 1971). The fact that respondent flew a right-handed traffic pattern when he knew that the runway called for left traffic clearly created the *potential* for a mishap.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The initial decision and the order of revocation are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

## Appendix

The violated regulations provide, in relevant part, as follows:

**§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.**

(a) No person may make or cause to be made --

\* \* \* \* \*

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for the issuance, or exercise of the privileges, or any certificate or rating under this Part;

\* \* \* \* \*

**§ 91.7 Civil aircraft airworthiness.**

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur.

**§ 91.13 Careless or reckless operation.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

(b) *Aircraft operations other than for the purpose of air navigation.* No person may operate an aircraft, other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.126 Operating on or in the vicinity of airport in Class G airspace.**

\* \* \* \* \*

(b) *Direction of turns.* When approaching to land at an airport without an operating control tower in Class G airspace--

(1) Each pilot of an airplane must make all turns of that airplane to the left unless the airport displays approved light signals or visual markings indicating that turns should be made to the right, in which case the pilot must make all turns to the right;

\* \* \* \* \*

**§ 91.203 Civil Aircraft: Certifications required.**

(a) Except as provided in § 91.715, no person may operate a civil aircraft unless it has within it the following:

(1) An appropriate and current airworthiness certificate. Each U.S. airworthiness certificate used to comply with this subparagraph (except a special flight permit, a copy of the applicable operations specifications issued under § 21.197(c) of this chapter, appropriate sections of the air carrier manual required by Parts 121 and 135 of this chapter containing that portion of the operations specifications issued under § 21.197(c), or an authorization § 91.611) must have on it the registration number assigned to the aircraft under Part 47 of this chapter. However, the airworthiness certificate need not have on it an assigned special identification number before 10 days after that number is first affixed to the aircraft. A revised airworthiness certificate having on it an assigned special identification number, that has been affixed to an aircraft, may only be obtained upon application to an FAA Flight Standards district office.

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**§ 119.5 Certifications, authorizations, and prohibitions.**

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(g) No person may operate as a direct air carrier or as a commercial operator without, or in violation of,

an appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any deviation or exemption authority, if issued to that person or that person's representative.

\* \* \* \* \*

(i) No person may operate as a direct air carrier without holding appropriate economic authority from the Department of Transportation.

\* \* \* \* \*

**§ 135.293 Initial and recurrent pilot testing requirements.**

(a) No certificate holder may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12<sup>th</sup> calendar month before that service, that pilot has passed a written or oral test, given by the Administrator or an authorized check pilot, on that pilot's knowledge....

\* \* \* \* \*

(b) No certificate holder may use a pilot, nor may any person serve as a pilot, in any aircraft unless, since the beginning of the 12<sup>th</sup> calendar month before that service, that pilot has passed a competency check given by the Administrator or an authorized check pilot in that class of aircraft, if single-engine airplane other than turbojet, or that type of aircraft, if helicopter, multiengine airplane, or turbojet airplane, to determine the pilot's competence in practical skills and techniques in that aircraft or class of aircraft....

\* \* \* \* \*

(e) The Administrator or authorized check pilot certifies the competency of each pilot who passes the knowledge or flight check in the certificate holder's pilot records.

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**§ 135.299 Pilot in Command: Line checks: Routes and airports.**

(a) No certificate holder may use a pilot, nor may



any person serve, as a pilot in command of a flight unless, since the beginning of the 12<sup>th</sup> calendar month before that service, that pilot has passed a flight check in one of the types of aircraft which that pilot is to fly....

\* \* \* \* \*